

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CRISTAN FERNANDO ALCANTARA §
MASARIESGO §
Plaintiff § CIVIL ACTION NO. 4:22-cv-2022
VS. § JURY TRIAL DEMANDED
S&D TRANSIT, INC. AND §
JOHNNY LEE ROACH §
Defendants §

EXHIBIT “B”

CAUSE NO. 22-05-06531

CRISTAN FERNANDO ALCANTARA MASARIESGO § **IN THE DISTRICT COURT OF**
§
§
§ **MONTGOMERY COUNTY, TEXAS**
§
§ Montgomery County - 284th Judicial District Court
§
§ **JUDICIAL DISTRICT**

VS.
S & D TRANSIT, INC. AND
JOHNNY LEE ROACH

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

Comes Now, Cristian Fernando Alcantara Masariesgo (“Plaintiff”), and files this Original Petition complaining of and against S & D Transit, Inc. (“S & D Transit” or “Defendant”), and Johnny Lee Roach (“Mr. Roach” or “Defendant”), and would respectfully show the Court as follows:

I. DISCOVERY LEVEL

Plaintiff seeks monetary relief over \$250,000.00 but not more than \$1,000,000.00 and a demand for judgment for all the other relief to which Plaintiff deems himself entitled.

Plaintiff intends to conduct discovery in this matter under Level 2 of Texas Rule of Civil Procedure 190.3.

II. PARTIES

Plaintiff Cristian Fernando Alcantara Masariesgo is a resident of Montgomery County, Texas.

Defendant S & D Transit is an Arkansas corporation doing business in the state of Texas and maintains a principal place of business at 240 Highway 71 S, Ashdown, Arkansas 71822. Defendant may be served with process may be served with process pursuant to the Texas Long-

Arm Statute by sending copies of the citation and this pleading through the Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079.

Defendant Johnny Lee Roach is a resident of Miller County, Arkansas, who committed a tort in Texas and resides at 11349 Highway 237, Texarkana, Arkansas, 71854. He may be served with process pursuant to the Texas Long-Arm Nonresident Motorist statute by sending copies of the citation and this pleading through the Chair of the Texas Transportation Commission, 125 E. 11th Street, Austin, Texas 78701-2483.

III. JURISDICTION & VENUE

The Court has subject matter jurisdiction over this matter because the amount in controversy exceeds the minimum jurisdictional limit of the Court. Venue is proper in Montgomery County, Texas, as this is the county in which the cause of action occurred.

IV. FACTUAL BACKGROUND

The collision occurred on October 6, 2021 in Montgomery County, Texas. Mr. Roach was operating a 2019 Freightliner Tractor Trailer while in the course and scope of his employment with S & D Transit.

Mr. Roach was traveling southbound in the 17000 block of US Highway 59. Mr. Roach failed to control his speed, failed to keep a proper lookout and struck a 2012 Ford Focus driven by Plaintiff.

Plaintiff suffered bodily injuries as a result of this incident.

V. NEGLIGENCE OF JOHNNY LEE ROACH

As Mr. Roach operated his vehicle at the time of the incident, he had a duty to exercise ordinary care in the operation of the same, to drive the vehicle in a reasonable and prudent manner, and to abide by the provisions of Chapter 545 of the Texas Transportation Code. Mr.

Roach negligently breached these duties in one or more of the following respects:

- A. In being inattentive;
- B. In failing to control his speed;
- C. In failing to keep a proper lookout;
- D. In failing take evasive action to avoid striking Plaintiff's vehicle;
- E. In failing to keep said vehicle under reasonable and proper control; and
- F. In failing to obey the statutes of the State of Texas as they pertain to the operation of a motor vehicle.

Mr. Roach's negligence was a proximate cause of the collision, as well as the bodily-injury damages Plaintiff suffered as a result of his involvement in the collision.

VI. NEGLIGENCE OF S & D TRANSIT

At the time of the incident, Johnny Lee Roach was operating a vehicle in the course and scope of his employment with S & D Transit. S & D Transit is legally responsible to Plaintiff for the negligent conduct of Johnny Lee Roach under the legal doctrines of respondeat superior, agency and/or ostensible agency because Johnny Lee Roach was at all times material hereto an agent, ostensible agent, servant and/or employee of S & D Transit, and was acting within the course and scope of such agency or employment. As a result thereof, S & D Transit is vicariously liable for all negligence of Johnny Lee Roach.

S & D Transit was also negligent in its hiring, training, supervision, monitoring and retention of Johnny Lee Roach, and such negligence proximately caused the collision and Plaintiff's injuries and damages.

Plaintiff pleads the foregoing facts and theories cumulatively and alternatively, with no election or waiver of rights or remedies.

VII. GROSS NEGLIGENCE OF DEFENDANTS

Plaintiff further alleges that the conduct of Defendants as described above constitutes gross negligence and malice, as those terms are defined by Texas law. That is, when viewed

objectively from the standpoint of Defendants, such acts and omissions involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others, and Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with a conscious indifference to the rights, safety and welfare of others.

As such, Plaintiff is entitled to recover exemplary/punitive damage as allowed by law for this conduct.

VIII. DAMAGES

Because of the actions and conduct of Defendants set forth above, Plaintiff suffered bodily injuries and damages. By reason of those injuries and the damages flowing in law therefrom, this suit is maintained.

Because of the nature and severity of the injuries Plaintiff sustained, he has suffered physical pain, mental anguish, and physical impairment, and in reasonable probability, will continue to suffer physical pain, mental anguish, and physical impairment into the future.

The injuries sustained by Plaintiff have required medical treatment in the past and, in reasonable probability, will require other and additional medical treatment in the future. Charges incurred by Plaintiff for such medical treatment in the past and those which will in reasonable probability be incurred in the future have been and will be reasonable charges made necessary by the incident in question.

IX. RESERVE THE RIGHT TO AMEND & SUPPLEMENT

These allegations against Defendants are made acknowledging that investigation and discovery, although undertaken, are continuing in this matter. As further investigation and discovery are conducted, additional facts will surely be uncovered that may and probably will necessitate further, additional, and/or different allegations, including the potential of adding

parties to and/or dismissing parties from the case. The right to do so is, under Texas law, expressly reserved.

X. REQUIRED INITIAL DISCLOSURE

Pursuant to Texas Rule of Civil Procedure 194(a), each Defendant is required to disclose, within thirty (30) days of the filing of the first answer, the information or material described in Rule 194.2(b)1-12. Any Defendant that is served or otherwise joined after the filing of the first answer must make their initial disclosures within thirty (30) days after being served or joined.

XI. PRE-JUDGMENT INTEREST

Plaintiff would additionally say and show that he is entitled to recovery of pre-judgment interest in accordance with law and equity as part of his damages herein, and Plaintiff here and now sues for recovery of pre-judgment interest as provided by law and equity under the applicable provisions of the laws of the State of Texas.

XII. RULE 193.7 NOTICE

Plaintiff hereby gives actual notice to Defendant that any and all documents produced may be used against them during any pretrial proceeding and/or at trial without the necessity of authenticating the documents as permitted by Texas Rule of Civil Procedure 193.7.

XIII. PRAYER

WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendants be cited to appear and answer herein, and that upon final trial, Plaintiff recovers actual damages as specified above from Defendants, jointly and severally, plus costs of Court, pre-judgment and post-judgment interest at the legal rate, and have such other and further relief, general and special, at law and in equity, to which Plaintiff may be justly entitled under the facts and circumstances.

Respectfully submitted,

LAW OFFICES OF DOMINGO GARCIA, L.L.P.

12929 Gulf Freeway
Houston, Texas 77034
Telephone: (713) 349-1500
Facsimile: (713) 432-7785

/s/ Leena Joseph

LEENA JOSEPH
State Bar No.: 24084374
ljoseph@millerweisbrod.com

ATTORNEY FOR PLAINTIFF



Request for Service

Montgomery County District Clerk

Melisa Miller, District Clerk
Montgomery County, Texas
Deputy Clerk, Charlotte Forbes

CASE NUMBER: 22-05-06531 CURRENT COURT: Montgomery County - 284th Judicial District Court

Name(s) of Documents to be served: PLAINTIFF'S ORIGINAL PETITION

FILE DATE of document(s) to be served: 05/20/2022 Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly as The Name Appears in The Pleading to Be Served):

Issue Service to: S & D Transit, Inc.

Address of Service: 240 Highway 71 S

City, State & Zip: Ashdown, Arkansas 71822

Agent (if applicable): Texas Secretary of State, P.O. Box 12079, Austin, Texas 78711-2079

Check here to have citation addressed to wherever the addressee may be found.

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the appropriate box)

<input type="checkbox"/> Citation for Personal Service	<input checked="" type="checkbox"/> Secretary of State Citation (\$12.00)	<input type="checkbox"/> Civil Injunction/TRO
<input type="checkbox"/> Citation by Posting	<input type="checkbox"/> Highway Commission (\$12.00)	<input type="checkbox"/> Precept
<input type="checkbox"/> Citation by Publication	<input type="checkbox"/> Commissioner of Insurance (\$12.00)	<input type="checkbox"/> Subpoena
<input type="checkbox"/> Citation Scire Facias	<input type="checkbox"/> Capias (not an E-Issuance)	<input type="checkbox"/> Other (Please describe)
<input type="checkbox"/> Writ of Garnishment	<input type="checkbox"/> Temporary Restraining Order (Family)	
<input type="checkbox"/> Writ of Sequestration	<input type="checkbox"/> Temporary Ex Parte Protective Order	
<input type="checkbox"/> Writ of Attachment	<input type="checkbox"/> Notice of Appl. For Protective Order	
<input type="checkbox"/> Writ of Habeas Corpus	<input type="checkbox"/> Notice of Hearing/Show Cause	
<input type="checkbox"/> Notice of Foreign Judgment (UIFSA)		
<input type="checkbox"/> Notice of Foreign Judgment (UCCJEA) (by certified mail service)		
<input type="checkbox"/> Writ of Withholding (\$15.00 - certified mail by District Clerk only)		
<input type="checkbox"/> Notice of Termination of Child Support (\$15.00 - certified mail by District Clerk only)		

(See additional forms for
Post Judgment Service)

SERVICE BY: (Check the appropriate box.)

E-Issuance by District Clerk (No Service Copy Fees Charged) (Note:) CAPIAS is not an E-Issuance Option

*Citations returned electronically will be e-served through E-file Texas to requesting attorney/pro se.

<input type="checkbox"/> ATTORNEY PICK-UP (phone or email contact): _____	<input type="checkbox"/> MAIL to attorney at Attorney of Record's address on file in case record.	<input type="checkbox"/> CERTIFIED MAIL by District Clerk
<input type="checkbox"/> Regular Mail (only available for Expedited Foreclosures and UIFSA Foreign Judgments)		
<input type="checkbox"/> CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____		
<input type="checkbox"/> OTHER, explain: _____		

Issuance of Service requested by:

Attorney/Party Name: LEENA JOSEPH Bar# or ID: 24084374

Mailing Address: 12929 GULF FREEWAY, SUITE 101, HOUSTON, TEXAS 77034

Phone Number: 713-349-1500



Request for Service

Montgomery County District Clerk

Melisa Miller, District Clerk
Montgomery County, Texas
Deputy Clerk, Charlotte Forbes

CASE NUMBER: 22-05-06531

CURRENT COURT: Montgomery County - 284th Judicial District Court

Name(s) of Documents to be served: PLAINTIFF'S ORIGINAL PETITION

FILE DATE of document(s) to be served: 05/20/2022 Month/Day/Year

SERVICE TO BE ISSUED ON (Please List Exactly as The Name Appears in The Pleading to Be Served):

Issue Service to: Johnny Lee Roach

Address of Service: 11349 Highway 237

City, State & Zip: Texarkana, Arkansas, 71854

Agent (if applicable): Texas Transportation Commission, 125 E. 11th Street, Austin, Texas 78701-2483

Check here to have citation addressed to wherever the addressee may be found.

TYPE OF SERVICE/PROCESS TO BE ISSUED: (Check the appropriate box)

<input type="checkbox"/> Citation for Personal Service <input type="checkbox"/> Citation by Posting <input type="checkbox"/> Citation by Publication <input type="checkbox"/> Citation Scire Facias <input type="checkbox"/> Writ of Garnishment <input type="checkbox"/> Writ of Sequestration <input type="checkbox"/> Writ of Attachment <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Notice of Foreign Judgment (UIFSA) <input type="checkbox"/> Notice of Foreign Judgment (UCCJEA) (by certified mail service) <input type="checkbox"/> Writ of Withholding (\$15.00 - certified mail by District Clerk only) <input type="checkbox"/> Notice of Termination of Child Support (\$15.00 - certified mail by District Clerk only)	<input type="checkbox"/> Secretary of State Citation (\$12.00) <input checked="" type="checkbox"/> Highway Commission (\$12.00) <input type="checkbox"/> Commissioner of Insurance (\$12.00) <input type="checkbox"/> Capias (not an E-Issuance) <input type="checkbox"/> Temporary Restraining Order (Family) <input type="checkbox"/> Temporary Ex Parte Protective Order <input type="checkbox"/> Notice of Appl. For Protective Order <input type="checkbox"/> Notice of Hearing/Show Cause	<input type="checkbox"/> Civil Injunction/TRO <input type="checkbox"/> Precept <input type="checkbox"/> Subpoena <input type="checkbox"/> Other (Please describe) <div style="border: 1px solid black; padding: 5px; width: 100%;">(See additional forms for Post Judgment Service)</div>
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SERVICE BY: (Check the appropriate box.)

E-Issuance by District Clerk (No Service Copy Fees Charged) (Note:) CAPIAS is not an E-Issuance Option

*Citations returned electronically will be e-served through E-file Texas to requesting attorney/pro se.

ATTORNEY PICK-UP (phone or email contact): _____

MAIL to attorney at Attorney of Record's address on file in case record.

CERTIFIED MAIL by District Clerk

Regular Mail (only available for Expedited Foreclosures and UIFSA Foreign Judgments)

CIVIL PROCESS SERVER - Authorized Person to Pick-up: _____ Phone: _____

OTHER, explain: _____

Issuance of Service requested by:

Attorney/Party Name: LEENA JOSEPH Bar# or ID: 24084374

Mailing Address: 12929 GULF FREEWAY, SUITE 101, HOUSTON, TEXAS 77034

Phone Number: 713-349-1500

CAUSE NUMBER: 22-05-06531

Melisa Miller, District Clerk
Montgomery County, Texas
Deputy Clerk, Taycee Aragon

**CRISTAN FERNANDO ALCANTARA
MASARIESGO
PLAINTIFF**

VS.

**S & D TRANSIT, INC. AND JOHNNY LEE
ROACH
DEFENDANT**

**IN THE 284TH JUDICIAL DISTRICT
COURT OF MONTGOMERY COUNTY,
TEXAS**

RETURN OF SERVICE

My name is **D'ANN WATHEN**. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am in all ways competent to make this affidavit and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is: 1320 QUITMAN ST. STE 100, HOUSTON, HARRIS COUNTY, TX 77009, U.S.A.

**ON Wednesday May 25, 2022 AT 11:13 AM - , TWO DUPLICATE COPIES OF CITATION;
PLAINTIFF'S ORIGINAL PETITION; AND \$25 JURISDICTIONAL FEE** came to hand for service upon **JOHNNY LEE ROACH BE SERVING THE TEXAS TRANSPORTATION COMMISSION.**

On **Friday May 27, 2022 at 10:11 AM** - The above named documents were hand delivered to: **JOHNNY LEE ROACH BE SERVING THE TEXAS TRANSPORTATION COMMISSION @ 125 E. 11TH STREET, AUSTIN, TX 78701, in Person.** by delivering to Jenna Townsend, designated agent.

FURTHER AFFIANT SAYETH NOT.

STATE OF TEXAS

DECLARATION

"My name is **D'ANN WATHEN**, my date of birth is 12/21/1971 my business address is **1320 QUITMAN STREET, HOUSTON, TX 77009**, and I declare under penalty of perjury that this affidavit is true and correct."

Executed in **Harris County, State of Texas on Friday May 27, 2022**

/s/D'ANN WATHEN

Declarant

PSC#6602 EXP. 06/30/23

Appointed in accordance with State Statutes

2022.05.654888

CAUSE NUMBER: 22-05-06531

Melisa Miller, District Clerk
Montgomery County, Texas
Deputy Clerk, Taycee Aragon

**CRISTAN FERNANDO ALCANTARA
MASARIESGO
PLAINTIFF**

VS.

**S & D TRANSIT, INC. AND JOHNNY LEE
ROACH
DEFENDANT**

**IN THE 284TH JUDICIAL DISTRICT
COURT OF MONTGOMERY COUNTY,
TEXAS**

RETURN OF SERVICE

My name is **D'ANN WATHEN**. I am over the age of eighteen (18), I am not a party to this case, and have no interest in its outcome. I am in all ways competent to make this affidavit and this affidavit is based on personal knowledge. The facts stated herein are true and correct. My business address is: 1320 QUITMAN ST. STE 100, HOUSTON, HARRIS COUNTY, TX 77009, U.S.A.

ON Wednesday May 25, 2022 AT 11:46 AM - , TWO DUPLICATE COPIES OF NON-RESIDENT CITATION; PLAINTIFF'S ORIGINAL PETITION; AND \$55 JURISDICTIONAL FEE came to hand for service upon **S & D TRANSIT, INC. BY SERVING THE TEXAS SECRETARY OF STATE.**

On **Friday May 27, 2022 at 10:14 AM** - The above named documents were hand delivered to: **S & D TRANSIT, INC. BY SERVING THE TEXAS SECRETARY OF STATE @ 1019 BRAZOS, AUSTIN, TX 78701, in Person.** by delivering to Venita Moss, designated agent.

FURTHER AFFIANT SAYETH NOT.

STATE OF TEXAS

DECLARATION

"My name is **D'ANN WATHEN**, my date of birth is 12/21/1971 my business address is **1320 QUITMAN STREET, HOUSTON, TX 77009**, and I declare under penalty of perjury that this affidavit is true and correct."

Executed in **Harris County, State of Texas on Friday May 27, 2022**

/s/D'ANN WATHEN
Declarant

PSC#6602 EXP. 06/30/23
Appointed in accordance with State Statutes

2022.05.654924

CAUSE NO. 22-05-06531

CRISTAN FERNANDO
ALCANTARA MASARIESGO § IN THE DISTRICT COURT OF
Plaintiff §
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§
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§
§
VS. § MONTGOMERY COUNTY, TEXAS
§
§
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§
S&D TRANSIT, INC. AND § 284TH DISTRICT COURT
JOHNNY LEE ROACH §
Defendant §

DEFENDANTS S&D TRANSIT, INC. AND
JOHNNY LEE ROACH'S ORIGINAL ANSWER

Defendants, S&D TRANSIT, INC. and JOHNNY LEE ROACH, file this answer in response to Plaintiff's latest petition and would respectfully show as follows:

General Denial

1. Defendants herein, pursuant to the provisions of Rule 92 of the Texas Rules of Civil Procedure, deny each and every, singular and all of the allegations contained in Plaintiff's Original Petition, say the allegations contained therein are not true, either in whole or in part, and demands strict proof thereof. Defendants further reserve the right to amend their answer at a future date in accordance with the Texas Rules of Civil Procedure.

Comparative Negligence

2. In the alternative, Defendants allege the comparative negligence of Plaintiff in failing to use ordinary care, was a proximate cause or the sole proximate cause of his injuries, if any. Defendants request at trial of this case the jury, pursuant to Texas Civil Practices & Remedies Code Chapter 33 et. seq., be asked to assess the comparative negligence, if any, of all parties to this lawsuit, all settling Defendants, and all Responsible Third Parties.

Proof of Certain Losses

3. Pleading further and subject to the foregoing, without waiving same, Defendants would show according to Section 18.091 of the Texas Civil Practice & Remedies Code, Plaintiff's alleged earnings, loss of earning capacity, loss of contributions of a pecuniary value, and/or loss of inheritance must be presented in the form of a net loss after reduction for income tax payments or unpaid tax liability pursuant to any federal and/or state income tax law.

Evidence Relating to Amount of Economic Damages

4. Pleading further and subject to the foregoing, without waiving same, Defendants would show that according to Section 41.0105 of the Texas Civil Practice & Remedies Code recovery of medical and health care related expenses should be limited to the amount actually paid or incurred.

Punitive or Exemplary Damages Unconstitutional

5. Pleading further and subject to the foregoing, without waiving same, Defendants invoke the defense of unconstitutionality, in that any award of punitive or exemplary damages would constitute the imposition of a criminal penalty without the safeguards guaranteed by the Fifth, Sixth, Eighth and Fourteenth Amendments of the Constitution of the United States, and similar provisions of the Texas Constitution. Furthermore, the imposition of such punitive or exemplary damages constitutes an excessive fine under the Eighth Amendment, denies Defendants equal protection of the law under the Fourteenth Amendment, and violates the due process clause of the Fifth and Fourteenth Amendments. Defendants would show that any claim by Plaintiff for punitive or exemplary damages should be stricken as unconstitutional and that any award of punitive or exemplary damages should be set aside for the reasons stated above.

6. Pleading further and subject to the foregoing, without waiving same, Defendants would show Plaintiff's recovery of exemplary damages, if any, is limited by Chapter 41 of the Texas Civil Practice and Remedies Code. To the extent the Court deems it appropriate to submit an exemplary damages question to the jury in this matter, the jury should be instructed as required by Chapter 41 of the Texas Civil Practice and Remedies Code. Defendants hereby pleads all of the limitations on and defenses to exemplary damages set forth in Chapter 41 of the Texas Civil Practice and Remedies Code.

Prayer

WHEREFORE, PREMISES CONSIDERED, Defendants, S&D TRANSIT, INC. and JOHNNY LEE ROACH, pray that Plaintiff take nothing by reason of this suit, that Defendants herein be released, discharged and acquitted of the charges, that they go hence with their costs, without delay and for such other and further relief, both general and special, at law and in equity, to which Defendants may be justly entitled.

Respectfully Submitted,

DONATO, BROWN, POOL & MOEHLMANN

By: /s/ Andrew J. Pratka

Andrew J. Pratka
SBN 24079159
3200 Southwest Freeway
Phoenix Tower, Suite 2300
Houston, Texas 77027-7525
Phone: 713-877-1112
Fax: 713-877-1138
apratka@donatobrown.com

**ATTORNEY FOR DEFENDANTS
S&D TRANSIT, INC. AND JOHNNY LEE
ROACH**

CERTIFICATE OF SERVICE

I hereby certify that, on the 17th day of June, 2022, a true and correct copy of the above and foregoing has been served by:

certified mail, return receipt requested; overnight delivery; hand delivery; United States first class mail; facsimile transmission; electronic transmission on the following counsel:

Plaintiff's counsel:

Leena Joseph
SBN: 24084374
Law Offices of Domingo Garcia, LLP
12929 Guld Freeway
Houston, Texas 77034
(713) 349-1500 – Telephone
(713) 432-7785 – Facsimile
ljoseph@millerweisbrod.com

/s/ Andrew J. Pratka _____

Andrew J. Pratka

Automated Certificate of eService

This automated certificate of service was created by the efiling system. The filer served this document via email generated by the efiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Mandy Romero on behalf of Andrew Pratka
Bar No. 24079159
mromero@donatobrown.com
Envelope ID: 65556262
Status as of 6/17/2022 3:13 PM CST

Associated Case Party: CristianFernandoAlcantara Masariesgo

Name	BarNumber	Email	TimestampSubmitted	Status
Leena Joseph		ljooseph@millerweisbrod.com	6/17/2022 2:11:45 PM	SENT

Associated Case Party: S & D Transit, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Andrew J.Pratka		apratka@donatobrown.com	6/17/2022 2:11:45 PM	SENT

CAUSE NO. 22-05-06531

CRISTAN FERNANDO
ALCANTARA MASARIESGO
Plaintiff

§ IN THE DISTRICT COURT OF

VS.

§ MONTGOMERY COUNTY, TEXAS

S&D TRANSIT, INC. AND
JOHNNY LEE ROACH
Defendant§ 284TH DISTRICT COURT

**DEFENDANTS S&D TRANSIT, INC. AND JOHNNY LEE ROACH'S
OBJECTION TO PLAINTIFF'S RULE 193.7 NOTICE**

Pursuant to Texas Rule of Civil Procedure 193.7, S&D TRANSIT, INC. and JOHNNY LEE ROACH ("Defendants"), object to Plaintiff's improper attempt, to generically designate for authentication "any document any Defendants produces in discovery" as indicated in Plaintiff's Rule 193.7 Notice contained in Plaintiff's Original Petition. Moreover, Defendants object to the authenticity of any such documents produced that are created by, or originated from, third parties. Plaintiff must identify the specific documents they intend to authenticate through Rule 193.7 before Defendants can determine if it has objections to those specific documents.

Defendants object to the authenticity of all documents it may produce in discovery that were not generated by Defendants. Further, Defendants may lack the knowledge sufficient to authenticate certain documents on any other basis under the Texas Rules of Evidence. Defendants will work with Plaintiff to reach an agreement,

if appropriate, regarding the authenticity of particular documents Plaintiff intends to offer during pre-trial proceedings or at trial.

Respectfully Submitted,

DONATO, BROWN, POOL & MOEHLMANN

By: /s/ Andrew J. Pratka

Andrew J. Pratka
SBN 24079159
3200 Southwest Freeway
Phoenix Tower, Suite 2300
Houston, Texas 77027-7525
Phone: 713-877-1112
Fax: 713-877-1138
apratka@donatobrown.com

ATTORNEY FOR DEFENDANTS
S&D TRANSIT, INC. AND JOHNNY LEE
ROACH

CERTIFICATE OF SERVICE

I hereby certify that, on the 17th day of June, 2022, a true and correct copy of the above and foregoing has been served by:

certified mail, return receipt requested; overnight delivery; hand delivery; United States first class mail; facsimile transmission; electronic transmission on the following counsel:

Plaintiff's counsel:

Leena Joseph
SBN: 24084374
Law Offices of Domingo Garcia, LLP
12929 Guld Freeway
Houston, Texas 77034
(713) 349-1500 – Telephone
(713) 432-7785 – Facsimile
ljoseph@millerweisbrod.com

/s/ Andrew J. Pratka

Andrew J. Pratka

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Mandy Romero on behalf of Andrew Pratka
Bar No. 24079159
mromero@donatobrown.com
Envelope ID: 65556262
Status as of 6/17/2022 3:13 PM CST

Associated Case Party: CristianFernandoAlcantara Masariesgo

Name	BarNumber	Email	TimestampSubmitted	Status
Leena Joseph		ljooseph@millerweisbrod.com	6/17/2022 2:11:45 PM	SENT

Associated Case Party: S & D Transit, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Andrew J.Pratka		apratka@donatobrown.com	6/17/2022 2:11:45 PM	SENT

CAUSE NO. 22-05-06531

CRISTAN FERNANDO	§	IN THE DISTRICT COURT OF
ALCANTARA MASARIESGO	§	
Plaintiff	§	
	§	
	§	
VS.	§	MONTGOMERY COUNTY, TEXAS
	§	
	§	
S&D TRANSIT, INC. AND	§	
JOHNNY LEE ROACH	§	284 TH DISTRICT COURT
Defendant		

**DEFENDANTS S&D TRANSIT, INC. AND
JOHNNY LEE ROACH'S JURY DEMAND**

Pursuant to TRCP 216, Defendants, S&D TRANSIT, INC. and JOHNNY LEE ROACH, requests a jury trial and tenders the required jury fee.

Respectfully Submitted,

DONATO, BROWN, POOL & MOEHLMANN

By: /s/ Andrew J. Pratka
Andrew J. Pratka
SBN 24079159
3200 Southwest Freeway
Phoenix Tower, Suite 2300
Houston, Texas 77027-7525
Phone: 713-877-1112
Fax: 713-877-1138
apratka@donatobrown.com

ATTORNEY FOR DEFENDANTS
S&D TRANSIT, INC. AND JOHNNY LEE
ROACH

CERTIFICATE OF SERVICE

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Plaintiff's counsel:

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Mandy Romero on behalf of Andrew Pratka
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Leena Joseph		ljooseph@millerweisbrod.com	6/17/2022 2:11:45 PM	SENT

Associated Case Party: S & D Transit, Inc.

Name	BarNumber	Email	TimestampSubmitted	Status
Andrew J.Pratka		apratka@donatobrown.com	6/17/2022 2:11:45 PM	SENT

<https://research.txcourts.gov/CourtRecordsSearch/ViewCasePrint/0def3fb1fd825d489cc1e448ee822553>

Case Information

Cristian Fernando Alcantara Masariesgo vs. S & D Transit, Inc.,Johnny Lee Roach

22-05-06531

Location	Case Category	Case Type	Case Filed Date
Montgomery County - District Clerk	Civil - Injury or Damage	Motor Vehicle Accident - Over \$250,000	5/20/2022

Judge
Bays, Kristin

Parties ³

Type	Name	Attorneys
Plaintiff	Cristian Fernando Alcantara Masariesgo	Leena T. Joseph
Defendant	S & D Transit, Inc.	
Defendant	Johnny Lee Roach	

Events ⁸

Date	Event	Type	Comments	Documents
5/20/2022	Filing	Petition	Plaintiff's Original Petition	POP.pdf
5/20/2022	Filing	Request for Service	Request for Service - S & D Transit, Inc.	civil process request form - S&D.pdf
5/20/2022	Filing	Request for Service	Request for Service - Johnny Lee Roach	civil process request form - j roach.pdf
5/27/2022	Filing	Return of Citation	Executed Citation to Johnny Lee Roach	654888.pdf
5/27/2022	Filing	Return of Citation	Executed Citation to S&D Transit INC	654924.pdf
6/17/2022	Filing	Answer/Response	Defendants S&D Transit, Inc. and Johnny Lee Roach's Original Answer	Answer - original.pdf
6/17/2022	Filing	Notice	Defendants S&D Transit, Inc. and Johnny Lee Roach's Objection to Plaintiff's Rule 193.7 Notice	Def.s Obj to Pltf 193.7 Notice.pdf
6/17/2022	Filing	Request	Defendants S&D Transit, Inc. and Johnny Lee Roach's Jury Demand	Jury Demand - draft.pdf

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CAUSE NO. 22-05-06531

**CRISTIAN FERNANDO ALCANTARA
MASARIESGO**

§

IN THE DISTRICT COURT OF

vs.

§

MONTGOMERY COUNTY, TEXAS

**S & D TRANSIT, INC.; JOHNNY LEE
ROACH**

§

284TH JUDICIAL DISTRICT

DOCKET CONTROL ORDER

IT IS ORDERED that this **Docket Control Order** shall control the disposition of this matter; the Texas Rules of Civil Procedure shall control in computing any period of time not addressed within this Order; and any date that falls on a weekend or legal holiday (as determined by the Montgomery County Commissioners Court) shall be moved to the first business day thereafter.

IT IS ORDERED THAT THE PLAINTIFF MUST IMMEDIATELY SEND A COPY OF THIS DOCKET CONTROL ORDER, BY A METHOD PRESCRIBED BY RULE 21a, TO EACH AND EVERY PARTY ANSWERING OR OTHERWISE APPEARING IN THIS CASE AFTER THE DATE THIS ORDER IS SIGNED.

1. **PLEADING DEADLINE:** **150 DAYS BEFORE TRIAL**
All amendments and supplements to pleadings must be filed by this date.
2. **EXPERT WITNESS DESIGNATION:**
A list shall be filed which includes each expert's name, address, telephone number, the subject of the testimony, and the opinions that will be proffered by each expert. **Experts not listed in compliance with this paragraph will not be permitted to testify absent a showing of an exception under Rule 193.6.** A Rule 195 disclosure is not a substitute for this filed designation.
(a) **Parties seeking affirmative relief** **150 DAYS BEFORE TRIAL**
(b) **All other parties** **120 DAYS BEFORE TRIAL**
3. **DISCOVERY RESPONSES:** **90 DAYS BEFORE TRIAL**
By no later than this date, all written discovery responses must be due, all responses and supplements must be completed, and all depositions must be completed, read, and signed.
4. **EXPERT CHALLENGE HEARINGS:** **75 DAYS BEFORE TRIAL**
All challenges to expert witnesses must be set for a hearing to occur by this date. Failure to obtain such a hearing is a waiver of any Rule 702 objection.
5. **SUMMARY JUDGMENTS:** **30 DAYS BEFORE TRIAL**
All such motions shall be set for a submission docket which is no later than this date.
6. **MOTIONS FOR CONTINUANCE:** **14 DAYS BEFORE TRIAL**
All motions for continuance of the Trial Date **must** be filed at least 14 days before the trial date, except in exigent circumstances, and will be considered by the Court without necessity of submission if they are agreed.

7. JOINT NOTICE FILING: **14 DAYS BEFORE TRIAL**

All parties will file a SINGLE Joint Notice with the Court, answering:

- (1) Are you ready for trial?
- (2) What is the estimated length of time for trial?
- (3) Do you need a Pre-Trial conference and, if so, why?
 - The Court will take up pre-trial motions in the hour prior to trial. You should request a Pre-Trial conference only if you need more time than that.
- (4) Are there any pending motions? If so, what are they and when were they filed?
- (5) Are there any special needs or accommodations for the presentation of the case, including any issues related to the availability of counsel and witnesses?

If there is a disagreement among the parties as to any of these five items, the Joint Notice will state the positions of each of the parties.

ANY PARTY WHO FAILS TO PARTICIPATE IN THE DRAFTING PROCESS WILL BE SUBJECT TO SANCTIONS, INCLUDING DISMISSAL FOR WANT OF PROSECUTION AND A FINDING OF ABANDONMENT OF CLAIMS OR DEFENSES PURSUANT TO TEXAS RULES OF CIVIL PROCEDURE 165 AND 165a.

– If any party does not participate with the Joint Notice, the party or parties filing the Joint Notice shall identify who did not participate.

IF A JOINT NOTICE IS NOT TIMELY FILED, THE COURT WILL PRESUME THAT THE PARTIES HAVE NO FURTHER INTEREST IN PURSUING OR DEFENDING THIS MATTER AND THE COURT WILL DISPOSE OF THIS SUIT BY DISMISSAL FOR WANT OF PROSECUTION AND A FINDING OF ABANDONMENT OF CLAIMS OR DEFENSES PURSUANT TO TEXAS RULES OF CIVIL PROCEDURE 165 AND 165a.

8. PRE-TRIAL MATERIALS: **14 DAYS BEFORE TRIAL**

By no later than this date, all parties shall exchange with each other and file the following:

- a. **EXHIBIT LIST.** All exhibits to be offered at trial shall be pre-marked and identified by exhibit number on the list, with exhibits served on other parties, but not filed. Any party requiring authentication of an exhibit must file and serve notice of same within 7 days after the exhibit is provided; FAILURE TO DO SO IS AN ADMISSION TO AN EXHIBIT'S AUTHENTICITY. All exhibits which the parties agree to admit shall be admitted into evidence as a first order of business on the trial date.
- b. **WITNESS LIST.** All witnesses who are anticipated to be called to testify at trial, including all experts shall be on the Witness List.
- c. **DEPOSITION EXCERPTS.** All deposition excerpts that may be offered at trial *in lieu* of live testimony shall be identified by specific designated pages and line numbers.
- d. **MOTIONS *IN LIMINE*.** Motions *In Limine* should be specific to the case. Please do not duplicate the items which already appear in the Court's Standing Order *In Limine*.
- e. **JURY CHARGE.** If the trial is to a jury, a proposed jury charge shall be filed.
- f. **FINDING OF FACT/CONCLUSIONS OF LAW.** If the trial is to the bench, proposed findings of Fact and Conclusions of Law shall be filed.

9. PRE-TRIAL CONFERENCE **SCHEDULED BY COURT**

The Court will set pre-trial conferences based on the Court's own motion or on request of the parties. The Court will notice all Pre-Trial conferences. Only those parties notified by the Court shall appear.

10. **TRIAL** **FEBRUARY 21, 2023**

This case is set for TRIAL on a two-week rolling docket beginning at 9:00 a.m. on the above date. If the case is not assigned by the second Friday following this date, then the case will be reset. **You are instructed to monitor the Court's website to determine at what date and time you should appear:**

https://www.mctx.org/departments/departments_d - f/district_courts/284th_district_court/trial_line-up.php

UNLESS OTHERWISE ORDERED BY THE COURT, THE FOREGOING DATES AS CALCULATED FROM THE TRIAL DATE STATED HEREIN REMAIN THE APPLICABLE DEADLINES FOR THIS CASE EVEN IF THE TRIAL DATE IS RESET AND REGARDLESS OF THE REASON FOR ANY RESET.

Signed on this the 17th day of June, 2022



KRISTIN BAYS, JUDGE PRESIDING
284th JUDICIAL DISTRICT COURT

Sent to: ljoseph@millerweisbrod.com; apratka@donatominxbrown.com